

STATE OF CALIFORNIA  
VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD  
VICTIM COMPENSATION PROGRAM REVISED REGULATIONS

Title 2, §§ 647.4, 649.14-649.62

Text proposed as a new regulation, or to be added to an existing regulation, is shown in underlined type. Text to be deleted from an existing regulation is shown in ~~strikeout type~~.

**§ 647.4. Consideration of Applications and Supplemental Claims**

(a) Following the verification process, VCP staff shall make a recommendation to the Board regarding the application or supplemental claim. Staff may recommend that the Board allow the application or supplemental claim, deny the application or supplemental claim, or allow the application or supplemental claim in part and deny the application or supplemental claim in part.

(b) In the event that VCP staff recommends denial of an application or supplemental claim in whole or in part, the staff of VCP shall prepare a notice of staff recommendation. Such notice shall include a statement as to why the matter is recommended for denial and shall be mailed to the affected applicant and his or her representative at their last known address of record. The notice shall inform the applicant and his or her representative of the right to a VCP hearing and how to request a hearing. ~~Every notice of staff recommendation to deny shall contain the following:~~

~~"This staff recommendation does not constitute a final administrative determination by the Victim Compensation and Government Claims Board (VCGCB) to deny your application or claim. You have a right to a hearing. To request a hearing and to ensure a full discussion of all relevant issues, you should follow the procedures set forth in this notice."~~

(c) If the VCP staff recommends denial of an application or supplemental claim in whole or in part, the applicant has 45 calendar days from the date of the mailing of the notice of the staff recommendation to request in writing that the matter be set for hearing to contest the staff recommendation. All written requests for hearing shall be mailed or delivered to the headquarters office of the VCP in Sacramento, California, the address for which shall be provided on this notice.

(d) Nothing in this section shall be construed to prevent an applicant or his or her representative from communicating with VCP staff during the period between notice of the staff recommendation and the date of hearing in order to supply additional information. Nothing in this section shall be construed to prevent VCP staff from amending the initial recommendation where additional documentation or information provides the necessary evidence to recommend approval of an application or supplemental claim.

Note: Authority cited: Section 11400.20, 13920 and 13974, Government Code.  
Reference: Sections 13956, 13958 and 13959, Government Code.

#### **§ 649.14. Minor Witnesses**

(a) A minor witness is a person under the age of 18 who suffers an emotional injury as a direct result of seeing or hearing a violent crime, and was in close physical proximity to the victim when he or she witnessed the crime.

(b) A minor witness does not include the following:

(1) A minor who knowingly and willingly participated in the commission of the crime that is the basis for the minor's application pursuant to section 13957(a)(2)(B)(iii);

(2) A minor who failed to cooperate reasonably with a law enforcement agency in the apprehension and conviction of a criminal committing the crime. However, in determining whether cooperation has been reasonable, the Board shall consider the witness' age, physical condition, and psychological state, cultural or linguistic barriers, any compelling health and safety concerns, including, but not limited to, a reasonable fear of retaliation or harm that would jeopardize the well-being of the witness or the witness' family, and giving due consideration to the degree of cooperation of which the witness is capable in light of the presence of any of these factors;

(3) A minor involved in the events leading to the crime. The Board shall consider the witness' age, physical condition, and psychological state, as well as any compelling health and safety concerns, in determining whether the witness' application should be denied; or

(4) A direct or derivative victim of the violent crime.

(c) For purposes of Government Code section 13957(a)(2)(B)(iii), a violent crime shall be found to have been committed in the following crimes:

(1) Murder and manslaughter (including vehicular manslaughter);

(2) Mayhem;

(3) Kidnapping;

(4) Carjacking;

(5) Assault with a deadly weapon;

(6) Battery resulting in great bodily injury;

(7) Rape and rape of spouse;

(8) Sodomy;

(9) Lewd and lascivious acts;

(10) Oral copulation;

(11) Robbery;

(12) Arson of inhabited dwelling; or

(13) Burglary of inhabited dwelling with physical injury to an inhabitant.

(d) The eligibility of a minor witness shall not be affected by the eligibility of the victim(s) or derivative victim(s).

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Sections 13956 and 13957(a)(2)(B)(iii), Government Code.

#### **§ 649.15. Good Cause for Filing Late Applications**

(a) A petition for relief from the period of limitations on grounds of good cause must be filed with the Board in writing not more than 30 days following the date notice is mailed to the applicant and his or her representative of the late filing, and shall include the statement under penalty of perjury as specified in subsection (b). An applicant failing to petition for relief in writing within the 30 days set forth herein will have his or her application ~~denied~~recommended for denial ~~and shall be deemed to have waived any right to relief from the period of limitations.~~

(b) In determining whether good cause exists justifying the late filing of an application, the VCP staff must consider the following factors, including but not limited to:

(1) A preponderance of the evidence supports that a qualifying crime occurred;

(2) Circumstances of the qualifying crime;

(3) Age;

(4) Documented physical or mental disability to such an extent during the time specified for filing an application that the applicant could not have effectively pursued a claim and the victim did not have a conservator;

(5) Cultural or linguistic barriers; and

(6) When the applicant discovers that he or she has incurred a pecuniary loss as a direct result of the crime.

An applicant seeking relief from the period of limitations on the filing of an application ~~may~~must, with his or her petition for relief and accompanying statement, ~~include~~submit any corroborating documents which serve to verify the stated justifications for late filing.

(c) If VCP staff does not find good cause for the late filing and recommends that the application be denied, the applicant may request a hearing to determine the existence or nonexistence of good cause.

(d) In all cases the determination by the Board as to the existence or nonexistence of good cause constitutes the final administrative determination on the issue, subject only to a proper motion for reconsideration upon a showing of new and additional evidence not reasonably available at the time of the initial hearing. Nothing in this section shall be

construed to prevent an applicant or his or her representative from filing the above stated declaration and petition for relief upon a showing of good cause simultaneously with the late application.

~~(e) An application shall be determined to be timely filed if it is filed within 90 days of a victim incurring a reimbursable loss and no earlier reimbursable loss had previously been incurred.~~

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Sections 13953 and 13954, Government Code.

#### **§ 649.16. Applications by Derivative Victims**

(a) The period of limitations for filing an application is tolled for derivative victims when an application by a victim or on behalf of a victim for the same qualifying crime is accepted by the VCP.

~~(b) A person shall not be eligible as both a victim and a derivative victim for the same qualifying crime except with respect to income and/or support loss.~~

~~(e b)~~ An person applicant shall only be eligible once as a derivative victim of a crime regardless of the number of direct victims for that same crime.

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Sections 13951, 13952 and 13953, Government Code.

#### **§ 649.17. Relocation Benefits**

(a) All cash payments or reimbursement for expenses incurred in relocating must be necessary as a direct result of the crime. The amount of reimbursement paid by the Board shall not exceed the statutory maximum, less the amount of reimbursement available from other sources.

(b) Determinations by law enforcement or mental health providers may be provided in a manner determined by the Board, which may include, but are not limited to, in writing, by telephone, or other electronic means.

(c) One claimant per crime giving rise to the relocation means that only one member of a household may receive relocation benefits even if more than one member of a ~~household~~ household is a direct victim of the qualifying crime.

(d) A higher level of scrutiny will apply to reimbursement requests if a significant amount of time has elapsed between the qualifying crime and the date of the relocation.

(e) Relocation expenses may include but are not limited to housing deposits, utility deposits, telephone deposits, connection fees, temporary lodging costs, emergency food expenses, emergency clothing costs, emergency costs of personal items, and other necessary expenses.

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Section 13957, Government Code.

**§ 649.17.1. Increased Relocation Benefits for Unusual, Dire, or Exceptional Circumstances**

(a) A claim that meets the established criteria for relocation benefits may be eligible for relocation reimbursement of an amount greater than \$2,000 due to unusual, dire, or exceptional circumstances including, but not limited to, the following:

(1) There is a crime report or other verification from law enforcement supporting that the applicant is an ongoing victim of threats or retaliation by or on behalf of the offender with a credible threat of great bodily injury or death and the claim meets the following two criteria:

(A) The applicant did not inform the offender of the location of the applicant's new residence or had obtained a restraining order against the offender and the offender has located the applicant; and

(B) The applicant's new residence must be located at a distance of no less than 30 miles from the residence at the time the crime occurred.

or

(2) If a mental health treatment provider has verified that the relocation was necessary for the emotional well-being of the applicant, then at least one of the following factors must be present:

(A) The qualifying crime resulted in substantial impairment of the applicant's activities of daily living;

(B) The qualifying crime resulted in permanent and substantial disability of the applicant; or

(C) The applicant is scheduled to testify or has testified as a witness in any criminal proceeding related to the qualifying crime and the need to relocate is directly related to the applicant testifying.

(b) The following circumstances will not qualify a victim for the unusual, dire, or exceptional circumstance relocation benefit on their own merit:

(1) Moving to or within a higher cost area

(2) Having a large family

(3) Moving a long distance

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Section 13957, Government Code.

#### **§ 649.19. Home Security Device or System**

(a) The VCP will reimburse the costs of a new or additional home security device or system. Examples of home security device or system items include, but are not limited to the following:

- (1) Alarms, keypads, cameras, and motion detectors.
- (2) Installation costs;
- (3) Monitoring costs;
- (4) Window bars and security doors; and
- (5) Replacing or increasing the number of locks.

(b) Examples of items which do not qualify as "installing or increasing residential security" and are not reimbursable, include but are not limited to the following:

- (1) Weapons (guns or non-lethal weapons);
- (2) Guard dogs; and
- (3) Self-defense courses.

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Section 13957, Government Code.

#### **§ 649.20. Purchase of a Vehicle**

(a) The Board may reimburse the expense of a vehicle upon verification that the expense is necessary for a victim who is permanently disabled as a direct result of the crime, whether the disability is partial or total.

(b) Justifications that may be considered for purchasing a vehicle include, but are not limited to:

- (1) Purchasing an accessible vehicle may be more economical than retrofitting the applicant's existing vehicle;
- (2) A different vehicle is needed to accommodate a wheelchair or other assistive device;  
or
- (3) Para-transit or public transit options may not be available to the claimant, and the claimant may need to purchase a vehicle when he or she did not have one before the crime.

(c) Items not eligible for reimbursement include, but are not limited to, any part or replacement that is necessary as a result of wear and tear or for maintenance.

(d) The applicant must submit a letter or statement from a mobility specialist, or a report from a rehabilitation specialist that states that the vehicle meets the measurements and requirements necessary to accommodate the disabled victim.

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Section 13957, Government Code.

#### **§ 649.26. ~~Objection to Direct Payment to Providers~~**

(a) If the VCP authorizes direct payment to a healthcare provider of VCP services, the VCP may require the provider to submit bills using CMS 1450, CMS 1500 or American Dental Association bill forms for verification of services provided. Applicants are not required to use the above-noted forms to request reimbursement of eligible pecuniary losses that they paid.

(b) The ~~Board~~ VCP shall inform the victim or derivative victim of his or her right to object to direct payments by VCP to providers of services in accordance with Government Code section 13957.7(c)(1) ~~of the code~~. In the event that the victim or derivative victim asserts such right the VCP may reimburse pecuniary loss to the victim or derivative victim only in amounts equal to sums actually paid out by the victim or derivative victim to the service provider and only upon submission by the victim, the victim's survivors, or derivative victim of evidence of such payments, subject to the rates and limitations set by the Board in accordance with applicable law. Following such an objection, direct payment shall be made to the provider only upon a demonstration of good cause as determined by the board.

Note: Authority cited: Section 13974, Government Code, Reference: Section 13957.7, Government Code.

#### **§ 649.28. Mental Health Counseling Providers**

(a) A provider of outpatient mental health counseling related services who receives payment from, or whose services were reimbursed by, the Victim Compensation Program shall be subject to a clinical or fiscal audit, or both, to ensure that treatment and reimbursement were authorized by law.

(b) A provider shall make all necessary clinical and fiscal records available to Board staff for review upon request for up to three years after the date that reimbursement was paid.

(c) If a non-profit agency applies to enter into an agreement with the VCP as a qualified provider pursuant to Government Code section 13957.9, the VCP shall consider that the non-profit agency utilized the Restitution Fund at a significant level on a regular and constant basis if the non-profit agency has been reimbursed a minimum of \$ ~~10,000~~ 100,000 during the previous fiscal year for mental health services.

Note: Authority cited: Section 13920(c), Government Code. Reference: Sections 13954, 13957(a)(2), ~~and~~ 13957.2(a) and 13957.9, Government Code.

#### **§ 649.31. Reimbursable Reimbursement Sources**

In the event that other Reimbursable reimbursement sources are disclosed as required during verification, the applicant shall obtain and provide a written explanation of such benefits from the insurer, or benefit program setting forth a determination of eligibility as regards the victim, the victim's survivors, or derivative victim as well as the dollar amount of assistance or reparations to which the victim, the victim's survivors, or derivative victim is entitled. In the event that the applicant is unable to obtain an explanation of benefits, the VCP or joint powers victim witness center shall take steps to obtain such explanation of benefits or other verification from the insurer or benefit program. If a supplemental claim or expense is directly related to the qualifying crime and requested information is not received after a reasonable amount of time, the supplemental claim or expense will be considered allowed. However, no payment will be made until the necessary information regarding reimbursement sources is received.

Note: Authority cited: Section 13974, Government Code. Reference: Sections 13951, 13952, 13954 and 13957(b), Government Code.

#### **§ 649.32. Verification of Income or Support Loss**

(a) All cash payments or reimbursement for income or support loss shall be necessary as a direct result of the crime.

(b) Income loss includes, but is not limited to, time lost from work for medical or mental health appointments necessary as a direct result of the crime.

(c) Evidence of income loss may include but not be limited to, documentation of earnings immediately preceding the date of the qualifying crime such as copies of all wage check stubs for periods immediately preceding the date of the qualifying crime, or copies of all state and federal income tax returns filed by the victim or applicant for the tax year immediately preceding the date of the crime or during the year of the crime, if available, or a Statement of Wages or Income as used to file with federal or state taxing authorities such as a W-2 IRS form actually filed with the taxing authorities, or a statement signed by the employer attesting to the payment of wages or income to the victim which statement shall include the name, telephone number and address of the employer or person who paid or would have paid the wages or income along with the employer's Federal Identification Number, or wage abstract from the Employment Development Department, or a profit/loss statement for self-employed victim or application generated and signed by a certified public accountant. For a self-employed victim or applicant, the income loss will be calculated based upon the adjusted gross income.

(d) Evidence of income loss may also include payment based upon a bona fide job offer, including but not limited to a job offer on the employer's letterhead with the employer's signature and federal tax identification number stating the terms of employment, work order or contracts for jobs in progress.

(e) The treating medical or mental health provider may verify disability within the scope of his or her licensure. A statement of disability provided by the treating medical or



mental health provider shall include information concerning the prognosis for recovery, the extent and expected duration of the disability, and certification that the disability resulted directly from the qualifying crime.

(1) For physical injuries, a disability statement may come from the following treating providers: medical doctor, osteopath, optometrist, dentist, podiatrist, or a chiropractor. If a chiropractor provides the disability statement, it will only be accepted for a disability period of one year.

(2) For emotional injuries, a disability statement may come from any treating licensed social worker, marriage and family therapist, licensed clinical psychologist or treating psychiatrist for a disability period of six months. When the total disability period exceeds six months, the disability statement must be completed by a treating licensed clinical psychologist or psychiatrist.

(f) A disability statement should contain sufficient information to verify the disability period that is a direct result of the crime. The following methods may also be used to verify disability time period, including but not limited to:

(1) A disability period is presumed for a period of up to seven days for crime-related injuries, or

(2) The shortest time period in "The Medical Disability Adviser: Workplace Guidelines for Disability Duration" (5th Edition) for physical injuries and type of work done by the victim or applicant.

~~(g) The maximum income loss to be paid under Government Code section 13957.5 shall be calculated based upon the cumulative disability period that is no more than five years following the crime.~~

(g) The maximum income loss cannot exceed the statutory time period in Government Code section 13957.5, even if there are gaps in the victim's disability, or other reimbursement sources which partially or fully cover any income or support loss.

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Sections 13957(a)(4) and 13957.5, Government Code.

### **§ 649.33. Derivative Victims Eligible for Support Loss**

(a) A derivative victim may be eligible for reimbursement of support loss if the derivative victim was legally dependant on the victim at the time of the crime.

(b) A derivative victim who is legally dependent on the victim at the time of the crime, includes but is not limited to:

(1) a minor child who is the legal dependent of each parent or legally adoptive parent ~~unless the minor child is emancipated or parental rights have been terminated;~~

(2) each spouse or registered domestic partner is the dependent of the other spouse or registered domestic partner; or

(3) an incapacitated adult that is the legal dependent of another adult or an unborn child conceived before the date of the crime.

(c) Evidence of legal dependency includes but is not limited to, birth certificates, marriage certificates, certificate of domestic partnership, medical records, adoption records, child support records, orders granting legal custody, alimony awards, settlements or agreements for spousal support, income tax records, Social Security disability or survivor benefits, veteran's death benefits, workers' compensation disability or death benefits, or any court order finding legal dependency or ordering support.

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Sections 13955, 13957(a)(4) and 13957.5(a)(4), Government Code.

#### **§ 649.48. Human Trafficking**

Factors that may be considered evidence of human trafficking include, but are not limited to:

(a) Law Enforcement Agency Endorsement issued pursuant to Section 236.2 of the Penal Code;

(b) human trafficking caseworker as identified in Section 1038.2 of the Evidence Code, has attested by affidavit that the individual was a victim of human trafficking;

(a c) certification or eligibility letter from a government agency for a special visa as a refugee due to human trafficking or other government benefits as a result of human trafficking; or

(b d) medical records documenting injuries consistent with human trafficking.

Medical or mental health records alone may not be sufficient evidence that the qualifying crime of human trafficking occurred.

Note: Authority cited: Sections 13920 and 13974 Government Code. Reference: Section 13956(b)(3), Government Code.

#### **§ 649.50. Involvement in a Vehicle-Related Qualifying Crime**

(a) A victim or derivative victim who was the driver of a vehicle, aircraft, or water vehicle may be found to have been involved in the events leading to the qualifying crime if one of the following was present:

(1) the victim or derivative victim was driving the vehicle with a blood alcohol content exceeding the legal limit;

(2) the victim or derivative victim was driving while under the influence of alcohol and/or drugs; or

(3) the victim or derivative victim was cited or arrested by law enforcement ~~as~~-based on the qualifying crime.

(b) If any of the factors listed in subsection (a) caused the qualifying crime, the application may be denied for participation in the qualifying crime under section 649.51.

(c) A victim or derivative victim who was the passenger in a vehicle driven by a person under the influence of alcohol or drugs may be found to have been involved in the events leading to the vehicle-related qualifying crime if one of the following was present:

(1) the victim or derivative victim knew or reasonably should have known that the driver was under the influence of alcohol or drugs; or

(2) the victim or derivative victim was under the influence of alcohol or drugs and if sober should have reasonably known that the driver was under the influence of alcohol or drugs.

(d) Subsection (c) does not apply if:

(1) the victim is under 14 years of age; or

(2) the victim is under 18 years of age and the driver of the vehicle was the parent or guardian of the victim.

(e) Subsection (c) may not apply if the victim is under 18 years of age and the driver of the vehicle is an adult who had responsibility for the victim other than the victim's parent or guardian.

(f) A victim or derivative victim may be found to have been involved in the events leading to the qualifying crime of a hit and run ( Vehicle Code section 20001) if both of the following are present:

(1) the victim or derivative victim acted in a blatant, wrongful or provoking manner; and

(2) the victim's or derivative victim's conduct was the primary cause of the vehicle collision.

(g) Significant weight may be given to the evidence from and conclusions of a law enforcement agency after investigation of the qualifying crime when evaluating the factors listed in subsections (a) and (f).

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Section 13955 and 13956 Government Code.

**§ 649.51. Participation in a Crime the Commission of a Crime for Which Compensation is Being Sought**

(a) A victim or derivative victim who knowingly and willingly participated in the commission of a crime that resulted in the pecuniary loss for which compensation is being sought shall not be eligible for assistance.

(1) This subsection shall not apply if the ~~qualifying~~ crime is a violation of Penal Code section 261.5 [Unlawful sexual intercourse with a minor] occurring on or after January 1, 1999.

(b) A derivative victim is not eligible for assistance if the victim of the same ~~qualifying~~ crime knowingly and willingly participated in the commission of a the crime.

(c) A victim or derivative victim knowingly and willingly participated in the commission of a the crime if the victim or derivative victim was any of the following:

- (1) a perpetrator;
- (2) a co-conspirator; or
- (3) an accomplice.

(d) Significant weight may be given to the evidence from and conclusions of a law enforcement agency after investigation of the qualifying crime when determining whether the victim or derivative victim participated in the commission of a crime.

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Section 13956, Government Code.

#### **§ 649.57. Mitigation of Involvement in the Events Leading to the Qualifying Crime**

(a) Factors that may be considered to mitigate or overcome involvement in the events leading to the qualifying crime include, but are not limited to:

- (1) the victim suffered an injury that was significantly more serious than reasonably could have been expected as a result of his or her involvement in the events leading to the qualifying crime;
- (2) another person involved in the events leading to the qualifying crime escalated his or her conduct in a manner not reasonably foreseeable by the victim or derivative victim;
- (3) a third party interfered in a manner not reasonably foreseeable by the victim or derivative victim.

(b) If factors overcome the victim or derivative victim's involvement, the application will be granted and the victim or ~~derivative victim~~ any individual who pays the victim's expenses as stated in Government Code section 13957(a)(9) shall be eligible for Program benefits.

(c) If factors mitigate the victim or derivative victim's involvement but do not overcome that involvement, the application will be granted in part, and the victim or ~~derivative victim~~ any individual who pays the victim's expenses as stated in Government Code section 13957(a)(9) shall only be eligible for medical expenses incurred on behalf of the victim from on or after the date of the qualifying crime and funeral/burial expenses incurred on behalf of the victim.

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Section 13956, Government Code.

#### **§ 649.62. Failure to Cooperate with Board or Staff**

(a) An application or supplemental claim may be denied based on an applicant's failure to cooperate with the Board, VCP staff, or the staff of a joint powers victim witness center in the verification of all information necessary to determine eligibility.

(b) An applicant may be found to have failed to cooperate if ~~either~~ any of the following are present:

(1) the applicant has information available to him or her, or which the applicant may reasonably obtain, that is needed to process the application or supplemental claim; and the applicant failed to provide the information after being requested to do so; ~~or~~

(2) the applicant provided or caused another to provide false information regarding the application or supplemental claim ; or

(3) the applicant refused to apply for other benefits potentially available to him or her from other sources besides the VCP including, but not limited to, workers' compensation, state disability insurance, Social Security benefits, and unemployment insurance.

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Section 13954, Government Code.